

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Laser Marking Services LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:44 IV liquidated damages

Employer: Laser Marking Services LLC, 5 Main St, Pittsfield, NH 03263

Date of Hearing: July 9, 2015

Case No.: 49507

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,440.00 in unpaid salary for the weeks ending November 4, 2014, November 11, 2014 and November 18, 2014. He further seeks liquidated damages.

The employer initially objected stating the claimant did not perform any work during two weeks but did agree the claimant was due one week of salary. At the hearing, the employer asserted the claimant had received a direct deposit on November 14, 2014, for two weeks of salary and had only one week of salary outstanding. The employer then agreed the November 14, 2014 did not clear the bank as his account was overdrawn. He agreed the claimant was due \$1,440.00 in unpaid salary.

He denied liquidated damages were due as he believed he could hold the claimant's final check because he had filed charges with the police against the claimant for theft. He now knows this is not allowable.

FINDINGS OF FACT

The employer agrees the claimant is due \$1,440.00 for three weeks of wages. The November 14, 2014, direct deposit for two weeks of wages did not clear because his account was overdrawn. He agreed the claimant is also due one additional week of salary.

The Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages/salary of \$1,440.00.

The claimant seeks liquidated damages for the employers failure to pay the wages when due pursuant to RSA 275:44.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The employer attempted to pay the original wages due November 14, 2014, but this direct deposit did not clear the employer's bank as the employer's account was overdrawn.

The employer incorrectly believed he could hold the claimant's final week's salary as he had filed charges against the claimant for theft.

The Hearing Officer finds the employer did not have the funds to pay the claimant, as his account had been overdrawn. Further, the Hearing Officer finds employer's argument that he held a genuine belief that he could hold the wages pending the charges for theft, persuasive. Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due in the time required because the employer did not have the financial ability to pay and also had a genuine belief he could hold the wages pending the charges for theft.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that he is owed the claimed wages/salary, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,440.00.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

The employer is hereby ordered to send a check to this Department, payable to Wayne P. Hughes, in the total of \$1,440.00, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: July 15, 2015

MJD/kdc